

1 A bill to be entitled
2 An act relating to the prescription of
3 psychotropic medications to dependent minors;
4 amending s. 743.0645, F.S.; defining the term
5 "psychotropic medication"; creating the Center
6 for Juvenile Psychotropic Studies within the
7 Department of Psychiatry of the College of
8 Medicine of the University of Florida;
9 providing the purpose of the center; providing
10 for the appointment of a director; creating an
11 advisory board; providing for board membership;
12 requiring the center to work with the
13 Department of Children and Family Services, the
14 Department of Juvenile Justice, the Agency for
15 Health Care Administration, and the Department
16 of Health; requiring certain data relating to
17 dependent minors for whom psychotropic
18 medications have been prescribed to be made
19 available to the center, as legally allowed;
20 requiring the center to report to legislative
21 leaders by a specified date; providing for
22 future repeal; amending s. 39.401, F.S.;
23 providing that the refusal of a parent, legal
24 guardian, or other person responsible for a
25 child's welfare to administer or consent to the
26 administration of a psychotropic medication
27 does not by itself constitute grounds for
28 taking the child into custody; providing an
29 exception; creating s. 402.3127, F.S.;
30 prohibiting the unauthorized administration of
31 medication by personnel associated with child

1 care entities; providing an exception for
2 emergency medical conditions when the child's
3 parent or legal guardian is unavailable;
4 defining the term "emergency medical
5 condition"; providing penalties for violations;
6 amending s. 1006.062, F.S.; requiring district
7 school boards to adopt rules prohibiting
8 district school board personnel from
9 recommending the use of psychotropic
10 medications for any student; allowing such
11 personnel to recommend that a medical
12 practitioner evaluate a student and to consult
13 with such practitioners; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 743.0645, Florida Statutes, is
19 amended to read:

20 743.0645 Other persons who may consent to medical care
21 or treatment of a minor; Center for Juvenile Psychotropic
22 Studies; creation; purpose; advisory board; report.--

23 (1) As used in this section, the term:

24 (a) "Blood testing" includes Early Periodic Screening,
25 Diagnosis, and Treatment (EPSDT) testing and other blood
26 testing deemed necessary by documented history or
27 symptomatology but excludes HIV testing and controlled
28 substance testing or any other testing for which separate
29 court order or informed consent as provided by law is
30 required.

31

1 (b) "Medical care and treatment" includes ordinary and
2 necessary medical and dental examination and treatment,
3 including blood testing, preventive care including ordinary
4 immunizations, tuberculin testing, and well-child care, but
5 does not include surgery, general anesthesia, provision of
6 psychotropic medications, or other extraordinary procedures
7 for which a separate court order, power of attorney, or
8 informed consent as provided by law is required.

9 (c) "Person who has the power to consent as otherwise
10 provided by law" includes a natural or adoptive parent, legal
11 custodian, or legal guardian.

12 (d) "Psychotropic medication" means a medicine that may
13 not be dispensed or administered without a prescription which
14 is used for the treatment of medical disorders, and includes
15 hypnotics, antipsychotics, antidepressants, antianxiety
16 agents, sedatives, and mood stabilizers such as lithium,
17 Depakote, and other anticonvulsants used as mood stabilizers
18 and psychomotor stimulants. This paragraph expires July 1,
19 2005.

20 (2) Any of the following persons, in order of priority
21 listed, may consent to the medical care or treatment of a
22 minor who is not committed to the Department of Children and
23 Family Services or the Department of Juvenile Justice or in
24 their custody under chapter 39, chapter 984, or chapter 985
25 when, after a reasonable attempt, a person who has the power
26 to consent as otherwise provided by law cannot be contacted by
27 the treatment provider and actual notice to the contrary has
28 not been given to the provider by that person:

29 (a) A person who possesses a power of attorney to
30 provide medical consent for the minor. A power of attorney
31 executed after July 1, 2001, to provide medical consent for a

1 minor includes the power to consent to medically necessary
2 surgical and general anesthesia services for the minor unless
3 such services are excluded by the individual executing the
4 power of attorney.

5 (b) The stepparent.

6 (c) The grandparent of the minor.

7 (d) An adult brother or sister of the minor.

8 (e) An adult aunt or uncle of the minor.

9

10 There shall be maintained in the treatment provider's records
11 of the minor documentation that a reasonable attempt was made
12 to contact the person who has the power to consent.

13 (3) The Department of Children and Family Services or
14 the Department of Juvenile Justice caseworker, juvenile
15 probation officer, or person primarily responsible for the
16 case management of the child, the administrator of any
17 facility licensed by the department under s. 393.067, s.
18 394.875, or s. 409.175, or the administrator of any
19 state-operated or state-contracted delinquency residential
20 treatment facility may consent to the medical care or
21 treatment of any minor committed to it or in its custody under
22 chapter 39, chapter 984, or chapter 985, when the person who
23 has the power to consent as otherwise provided by law cannot
24 be contacted and such person has not expressly objected to
25 such consent. There shall be maintained in the records of the
26 minor documentation that a reasonable attempt was made to
27 contact the person who has the power to consent as otherwise
28 provided by law.

29 (4) The medical provider shall notify the parent or
30 other person who has the power to consent as otherwise
31 provided by law as soon as possible after the medical care or

1 treatment is administered pursuant to consent given under this
2 section. The medical records shall reflect the reason consent
3 as otherwise provided by law was not initially obtained and
4 shall be open for inspection by the parent or other person who
5 has the power to consent as otherwise provided by law.

6 (5) The person who gives consent; a physician,
7 dentist, nurse, or other health care professional licensed to
8 practice in this state; or a hospital or medical facility,
9 including, but not limited to, county health departments,
10 shall not incur civil liability by reason of the giving of
11 consent, examination, or rendering of treatment, provided that
12 such consent, examination, or treatment was given or rendered
13 as a reasonable prudent person or similar health care
14 professional would give or render it under the same or similar
15 circumstances.

16 (6) The Center for Juvenile Psychotropic Studies is
17 created within the Department of Psychiatry of the College of
18 Medicine of the University of Florida. The purpose of the
19 center is to collect, track, and assess information regarding
20 minors in state custody held pursuant to chapter 39, chapter
21 984, or chapter 985 who have been or are currently being
22 prescribed psychotropic medications.

23 (a) In addition to determining the number of children
24 in state custody who are receiving psychotropic medications,
25 the types and dosages of medication being prescribed to those
26 children, and any other data relevant to scientifically
27 assessing the status of minors in state custody who are
28 receiving psychotropic medications, the center shall evaluate:

29 1. Whether the child received a full and complete
30 medical evaluation and, to the extent that the medication was
31 prescribed for a psychiatric condition and it is possible to

1 determine from available records, whether or not all other
2 possible physical causes had been ruled out prior to the
3 prescribing of psychotropic medication.

4 2. What other treatments and services were recommended
5 for the child in addition to psychotropic medication and
6 whether or not those services were offered or delivered.

7 3. Whether or not informed consent was received from a
8 parent, legal guardian, or the court prior to initiating
9 treatment.

10 4. Whether or not followup monitoring and treatment
11 appropriate to the child's diagnosis and prescribed medication
12 were provided to the child.

13 5. In cases where court authorization was sought,
14 whether a full and complete child resource record was provided
15 to the court for decisionmaking purposes.

16 6. Whether or not the prescription for and type of
17 psychotropic medications prescribed for the child were
18 appropriate for the age and diagnosis of the child and
19 consistent with the medical standard of care for the treatment
20 of the child's condition.

21 (b) The director of the Center for Juvenile
22 Psychotropic Studies shall be appointed by the Dean of the
23 College of Medicine of the University of Florida.

24 (c) There is created an advisory board that shall
25 periodically and objectively review and advise the center on
26 the academic rigor and research parameters of all actions
27 taken pursuant to this subsection. The board shall consist of
28 the following nine members who have backgrounds in psychiatric
29 health:

30 1. The Secretary of Children and Family Services or
31 his or her designee;

- 1 2. The Secretary of Juvenile Justice or his or her
2 designee;
- 3 3. The Secretary of Health Care Administration or his
4 or her designee;
- 5 4. The Secretary of Health or his or her designee;
- 6 5. One member appointed by the President of the Senate
7 from the Florida Psychiatric Society who specializes in
8 treating children and adolescents;
- 9 6. One member appointed by the Speaker of the House of
10 Representatives who is a pediatrician experienced in treating
11 children and adolescents with psychiatric diseases;
- 12 7. One member appointed by the President of the
13 University of Florida who is an epidemiologist; and
- 14 8. Two members appointed by the Governor, one of whom
15 has experience serving as a guardian ad litem to children and
16 adolescents in the custody of the state who have psychiatric
17 diseases, and one of whom is employed by the Louis de la Parte
18 Florida Mental Health Institute and has experience in the
19 academic study of children and adolescents with psychiatric
20 diseases.
- 21 (d) The center shall work in conjunction with the
22 Department of Children and Family Services, the Department of
23 Juvenile Justice, the Agency for Health Care Administration,
24 and the Department of Health, and, to the extent allowed by
25 the privacy requirements of federal and state laws, those
26 agencies shall work with the center and make available to the
27 center data regarding such dependent minors, including, but
28 not limited to:
- 29 1. Demographic information, including, but not limited
30 to, age, geographic location, and economic status.
- 31

1 2. A family history of each dependent minor,
2 including, but not limited to, the minor's involvement with
3 the child welfare system or the juvenile justice system, all
4 applicable social service records, and all applicable court
5 records.

6 3. A medical history of each dependent minor,
7 including, but not limited to, the minor's medical condition.

8 4. All information regarding the medications
9 prescribed or administered to each minor, including, but not
10 limited to, information contained in each minor's medication
11 administration record.

12 5. Practice patterns, licensure, and board
13 certification of prescribing physicians.

14 (e) All oral and written records, information,
15 letters, and reports received, made, or maintained by the
16 center shall be maintained in a manner consistent with all
17 applicable state and federal law.

18 (f) A privilege against civil liability is granted to
19 any person furnishing medical records in furtherance of the
20 charge of the center, unless such person furnishing medical
21 records acted in bad faith or with malice in providing such
22 information. A person who participates in the center's
23 research activities or provides information to the center with
24 regard to the incompetence, impairment, or unprofessional
25 conduct of any health care provider licensed under chapter
26 458, chapter 459, chapter 460, chapter 461, chapter 462,
27 chapter 463, chapter 464, chapter 465, or chapter 466 may not
28 be held liable in any civil action for furnishing such medical
29 records if such person acts without intentional fraud or
30 malice.

31

1 (g) By January 1, 2005, the center shall report its
2 findings regarding psychotropic medications prescribed to
3 dependent minors in state custody to the President of the
4 Senate, the Speaker of the House of Representatives, and the
5 appropriate committee chairs of the Senate and the House of
6 Representatives.

7 (h) This subsection expires July 1, 2005.

8 ~~(7)(6)~~ The Department of Children and Family Services
9 and the Department of Juvenile Justice may adopt rules to
10 implement this section.

11 ~~(8)(7)~~ This section does not affect other statutory
12 provisions of this state that relate to medical consent for
13 minors.

14 Section 2. Subsection (1) of section 39.401, Florida
15 Statutes, is amended to read:

16 39.401 Taking a child alleged to be dependent into
17 custody; law enforcement officers and authorized agents of the
18 department.--

19 (1) A child may only be taken into custody:

20 (a) Pursuant to the provisions of this part, based
21 upon sworn testimony, either before or after a petition is
22 filed; or

23 (b) By a law enforcement officer, or an authorized
24 agent of the department, if the officer or authorized agent
25 has probable cause to support a finding:

26 1. That the child has been abused, neglected, or
27 abandoned, or is suffering from or is in imminent danger of
28 illness or injury as a result of abuse, neglect, or
29 abandonment;

30
31

1 2. That the parent or legal custodian of the child has
2 materially violated a condition of placement imposed by the
3 court; or

4 3. That the child has no parent, legal custodian, or
5 responsible adult relative immediately known and available to
6 provide supervision and care.

7
8 The refusal of a parent, legal guardian, or other person
9 responsible for a child's welfare to administer or consent to
10 the administration of any psychotropic medication to the child
11 does not, in and of itself, constitute grounds for the
12 department to take the child into custody, or for any court to
13 order that the child be taken into custody by the department,
14 unless the refusal to administer or consent to the
15 administration of psychotropic medication causes the child to
16 be neglected or abused.

17 Section 3. Section 402.3127, Florida Statutes, is
18 created to read:

19 402.3127 Unauthorized administration of medication.--

20 (1) An employee, owner, household member, volunteer,
21 or operator of a child care facility, large family child care
22 home, or family day care home, as defined in s. 402.302,
23 including a child care program operated by a public or
24 nonpublic school deemed to be child care under s. 402.3025,
25 which is required to be licensed or registered, may not,
26 without written authorization from a child's parent or legal
27 guardian, administer any medication to a child attending the
28 child care facility, large family child care home, or family
29 day care home. The written authorization to administer
30 medication must include the child's name, the date or dates
31 for which the authorization is applicable, dosage

1 instructions, and the signature of the child's parent or legal
2 guardian.

3 (2) In the event of an emergency medical condition
4 when a child's parent or legal guardian is unavailable, an
5 employee, owner, household member, volunteer, or operator of a
6 licensed or unlicensed child care facility, large family child
7 care home, or family day care home may administer medication
8 to a child attending the facility or home without the written
9 authorization required in subsection (1) if the medication is
10 administered according to instructions from a prescribing
11 health care practitioner. The child care facility, large
12 family child care home, or family day care home must
13 immediately notify the child's parent or legal guardian of the
14 emergency medical condition and of the corrective measures
15 taken. If the parent or legal guardian remains unavailable and
16 the child's emergency medical condition persists, the child
17 care facility must immediately notify the child's medical care
18 provider.

19 (3) As used in this section, the term "emergency
20 medical condition" means circumstances in which a prudent
21 layperson acting reasonably would believe that an emergency
22 medical condition exists.

23 (4)(a) A person who violates this section commits a
24 felony of the third degree, punishable as provided in s.
25 775.082 or s. 775.083, if the violation results in serious
26 injury to the child.

27 (b) A person who violates this section commits a
28 misdemeanor of the first degree, punishable as provided in s.
29 775.082 or s. 775.083, if the violation does not result in
30 serious injury to the child.

31

1 Section 4. Subsection (8) is added to section
2 1006.062, Florida Statutes, to read:

3 1006.062 Administration of medication and provision of
4 medical services by district school board personnel.--

5 (8) Each district school board shall adopt rules that
6 prohibit all district school board personnel, except
7 psychiatrists licensed under chapter 458 or chapter 459, from
8 recommending the use of psychotropic medications for any
9 student. This subsection does not prohibit district school
10 board personnel from recommending that a student be evaluated
11 by an appropriate medical practitioner and does not prohibit
12 district school board personnel from consulting with such a
13 practitioner with the consent of the student's parent.

14 Section 5. This act shall take effect July 1, 2004.
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31